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Attorneys for Defendants  
MELISSA BASSANELLI, in her official capacity as  
Superintendent of San Juan Unified School District,  
ZIMA CREASON, PAM COSTA, SAUL HERNANDEZ,  
BEN AVEY, PAULA VILLESCAZ, and TANYA  
KRAVCHUK, in their official capacities as board  
Members of San Juan Unified School District

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHN and BREANNA WOOLARD, et al.

Case No.: 2:23-CV-02305-JAM-JDP

13 Plaintiffs,  
14 vs.  
15 TONY THURMOND, et al.  
16 Defendants.

**DEFENDANTS MELISSA BASSANELLI,  
ZIMA CREASON, PAM COSTA, SAUL  
HERNANDEZ, BEN AVEY, PAULA  
VILLESCAZ, AND TANYA KRAVCHUK,  
REPLY IN SUPPORT OF MOTION TO  
DISMISS PURSUANT TO FRCP 12(b)(6)**

**DATE: April 9, 2024  
TIME: 1:30 P.M.  
COURTROOM: 6, 14<sup>TH</sup> FLOOR**

Complaint Filed: October 11, 2023

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:  
Defendants MELISSA BASSANELLI, ZIMA CREASON, PAM COSTA, SAUL HERNANDEZ, BEN AVEY, PAULA VILLESCAZ, and TANYA KRAVCHUK, hereby and herewith reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss.

**I. REINTRODUCTION**

Rather than offer plausible allegations of conduct by SJUSD Defendants contributing to any practice, policy or procedure at issue between them and Visions in Education, Plaintiffs suggest that

1 their Complaint connecting SJUSD Defendants and the curriculum, grading and expulsion process  
 2 involving only Plaintiffs C.D. and Carrie Dodson, and Visions in Education is sufficient to keep  
 3 them in the case. Plaintiffs argue that because they “only” seek prospective injunctive relief, that  
 4 naming the chartering authority district board members and superintendent, in their official  
 5 capacity, is enough to keep them in the case because SJUSD Defendants would be involved in  
 6 instituting that relief if granted. However, by Plaintiffs’ own allegations, SJUSD Defendants had  
 7 anything to do with the curriculum or grading issues that they complain about, or any expulsion  
 8 process, and will not implement any injunctive relief if granted. Rather, those issues were (and  
 9 injunctive relief will be) handled by Visions’ personnel including its own board, superintendent,  
 10 principal and teachers which comports with Plaintiffs’ cited authority that those officials from  
 11 within the organization necessary to implement injunctive relief may be kept in a case despite  
 12 requisite actions connecting them to unlawful conduct.

13 Plaintiffs’ contentions are misplaced and should not keep SJUSD Defendants in the case.  
 14 SJUSD Board Members did not craft any policies, were never implicated in any practice or  
 15 procedure let alone conduct complained about, and had nothing to do with any educational process  
 16 involving C.D. The same is true for the SJUSD Superintendent. The SJUSD Defendants would not  
 17 be responsible for implementing any injunctive relief because, if granted, that will be handled from  
 18 within Visions in Education by its own Executive Director/Superintendent, Board and  
 19 administrators.

20 Therefore, the SJUSD Defendants should be dismissed from the litigation, leaving Plaintiffs  
 21 and Visions in Education as well as the other defendants to sort out the constitutional dispute  
 22 between them.

23 **II. PROCEDURAL DEVELOPMENTS SINCE FILING MOTION TO DISMISS**

24 The SJUSD Defendants’ Motion to Dismiss focused on three issues. The first issue is the  
 25 lack of conduct or connection by the SJUSD Defendants to the alleged legal violation asserted by  
 26 Plaintiffs.<sup>1</sup> In addition, the Motion to Dismiss also addressed the failure of Plaintiffs’ Complaint to

27 <sup>1</sup> Plaintiffs’ Complaint claimed a single basis for SJUSD Defendants involvement here – an  
 28 assertion that a statute applicable to special education programs (unlike Visions’ Home School  
 Academy) required direct oversight by SJUSD. ECF 1, ¶22.

1 allege a substantial interference with their free exercise rights as asserted through the First  
2 Amendment as well as qualified immunity. SJUSD Defendants were the first parties to appear in  
3 the case by answer or responsive pleading.

4 Since then, the other defendants including Visions in Education and California Department  
5 of Education on behalf of Defendant Thurmond, have approached the Court with a stipulation  
6 regarding their own motions to dismiss on the substantive constitutional violation allegations. In  
7 response, SJUSD Defendants agreed to sever their constitutional and qualified immunity portions of  
8 the Motion to Dismiss while leaving the primary crux of the motion intact. The Court, on its own  
9 motion, has continued the SJUSD Defendants' hearing for Motion to Dismiss to be heard  
10 concurrently with the other defendants.

11 Plaintiffs' Opposition to the SJUSD Defendants' Motion to Dismiss was filed and now  
12 argues that there is sufficient connection between SJUSD Defendants and the policies and  
13 procedures here. They claim the right to revoke the charter for Visions' failure to comply with the  
14 "law" establishes sufficient control to keep them in the case where prospective injunctive relief is  
15 sought. In addition, Plaintiffs also argue that the Complaint sufficiently alleges substantial  
16 interference with their right to free exercise of their religion, and that qualified immunity should not  
17 be granted on a motion to dismiss. In the process, Plaintiffs offer no opposition to the Court taking  
18 judicial notice of Exhibit A to ECF 24-2 – Charter Renewal Petition for Visions in Education,  
19 California Charter School #248, and Exhibit B – California Secretary of State filings for Visions in  
20 Education.

21 Now, Plaintiff Carrie Dodson and C.D. implausibly claim they have absolute control  
22 regarding the curriculum that the student will follow in a public charter school. (ECF 29, 2:19-24.)  
23 This is impossible given that Visions operates as a California charter school and, thus, is a public  
24 school. No California public school student can go to class and dictate their own curriculum to be  
25 followed, and certainly not one that was sectarian or denominational in nature.

26 Here, SJUSD's Reply will focus on Plaintiffs' inability to demonstrate a connection between  
27 SJUSD Defendants, and the conduct complained of here sufficient to keep those defendants in the  
28 case. They were not involved in the underlying conduct and would not be involved in any

1 injunctive relief to be implemented because they do not operate, control or participate in the  
2 policies, procedures, curriculum choices, grading or implementation of policy for the charter  
3 school.

4 Insofar as the other defendants are the ones involved in the policies, practices and  
5 procedures which Plaintiffs complain of and would resolve injunctive relief if granted, SJUSD  
6 Defendants will defer to them to further present and reply as to those constitutional issues.

7 **III. SJUSD DEFENDANTS ARE NOT INVOLVED WITH ANY CONDUCT NOR ANY  
8 PRACTICE OR PROCEDURE THAT PLAINTIFFS COMPLAIN ABOUT HERE AND  
9 WOULD NOT IMPLEMENT ANY INJUNCTIVE RELIEF IF GRANTED**

10 Plaintiffs' (Carrie Dodson and C.D.) Opposition is notable for its singular focus on Visions  
11 in Education's conduct here. Plaintiffs allege that Visions rejected their curriculum choice, refused  
12 to grade coursework based on their curriculum choice, and then expelled him for not performing the  
13 work required of the curriculum. (ECF 29, 1:19-1:22.) Plaintiffs' allegations involve only Visions  
14 in their issues and there is no allegation of report of the dispute to SJUSD Defendants. However,  
15 Plaintiffs now argue that as a chartering authority, SJUSD has responsibility for enforcing Visions'  
16 compliance with the charter petition, but cannot explain how their dispute violates same. Plaintiffs  
17 ignore that San Juan Unified School District's "oversight" does not reach the issues that Plaintiffs  
complain of here. (Ibid. 2:1-3.)

18 As a second basis of opposition, Plaintiffs argue that because they seek only injunctive  
19 relief, naming SJUSD defendants including its board members and superintendent in their "official  
20 capacity" is appropriate based upon the *Hartmann v. California Department of Corrections and*  
*Rehabilitation* case. (ECF 29, 6:15-24.) Plaintiffs allege that SJUSD defendants are properly  
21 named in their official capacity because they seek injunctive relief, and officials who will  
22 appropriately implement to injunctive relief are proper defendants. While this may be a correct  
23 statement of law, it is misapplied to the facts here.

24 **A. SJUSD Defendants do not Control Visions' Curriculum Issues**

25 Notwithstanding the initial assertion in paragraph 22 of the Complaint which applies to  
26 special education and is not at issue here, Plaintiffs assert in opposition that SJUSD Defendants  
27

1 exercise control over the charter school. The position ignores the Education Code. The duties of a  
 2 chartering authority like SJUSD are limited to identifying a charter school contact person, visiting  
 3 the charter school annually, ensuring that the charter school provide reports as required by law,  
 4 monitoring the physical condition of the charter school and providing timely notification to the  
 5 Department of Education under limited circumstances not at issue here. Ed Code §47604.32(a).

6 Plaintiffs' citation to Education Code §47607(f)(1) & (4) does not change the fact that the  
 7 SJUSD Defendants do not operate the Visions' charter program. Moreover, Plaintiffs present a  
 8 crabbed view of that Education Code to suggest that SJUSD Defendants can simply "revoke" the  
 9 charter of Visions in Education which gives them sufficient control over the dispute here.

10 Rather, Education Code §47607 provides four grounds upon which a chartering authority  
 11 may revoke a charter school's charter petition including material violation of the conditions set  
 12 forth in the charter, failing to meet or pursue the pupil outcomes identified in the charter, failing to  
 13 meet generally accepted accounting principles or engaging in fiscal mismanagement, or violation of  
 14 the law. Ed. Code §47607(f)(1)-(4). However, contrary to Plaintiffs' representation in opposition,  
 15 it is not a simple, snap-of-the-fingers process assuming that the dispute between Plaintiffs and  
 16 Visions was brought to SJUSD Defendants' attention. Instead, prior to revocation, the charter shall  
 17 have a reasonable opportunity to remedy the violation (Ed. Code 47607(g)) and must receive  
 18 written notice of the intent to revoke, identifying all facts in support of the revocation, and provide  
 19 for a public hearing where the charter school and public may be heard regarding the contentions.  
 20 Ed. Code §47607(h). Thereafter, the chartering authority shall only revoke the charter upon written  
 21 factual findings supported by substantial evidence supporting the revocation. *Id.*

22 Even thereafter, the charter school can pursue an appeal including to the County Board of  
 23 Education (which provides another hearing process), as well as appeal to the State Board of  
 24 Education for another hearing process. Ed. Code §47607(i)(1)-(4). Anywhere along the way, if the  
 25 revocation is not upheld, the charter school remains in place and the district remains as the  
 26 chartering authority. Ed. Code §47607(k).

27 Of course, this revocation process was never at issue here because at no time did either of  
 28 the Visions' plaintiffs ever report any alleged discrimination to San Juan Unified School District

1 according to their allegations.<sup>2</sup> The SJUSD Defendants were never involved with any of the  
 2 conduct which Plaintiffs complain about here.

3 Even if a revocation of charter is upheld at any point in the appeals process, the charter  
 4 school operator may petition for a writ of administrative mandate to challenge the revocation.  
 5 *American Indian Model Schools v. Oakland Unified School Dist.*, 227 Cal.App.4<sup>th</sup> 258, 271-273  
 6 (2014). Upon considering a school district's revocation of a charter school charter, the primary  
 7 focus on the decision is consideration of increases in pupil academic achievement for all groups of  
 8 pupils served by the charter school. (*Id.* at 278.) In short, contrary to Plaintiffs' implausible  
 9 suggestion that the ability to revoke the charter gives SJUSD total control over Visions In  
 10 Education, the reality is that revocation offers little, if any, control unless student performance is the  
 11 basis for the revocation decision.

12 Plaintiffs offer no legal argument nor support to counter Education Code §47604(a) which  
 13 provides that the requisite control over a charter school rests with the non-profit public benefit  
 14 corporation operating the charter school – here, Visions in Education. Once established pursuant to  
 15 the Education Code as Visions has been established, the charter school **is the school district.**  
 16 *Wilson v. State Board of Education*, 75 Cal.App.4<sup>th</sup> 1125, 1138 (2000).

17 It is inescapable that Visions has its own governance under the Charter Renewal Petition  
 18 and, once subject to a Charter Petition, operates as is its own school district. *California School*  
 19 *Boards Assn. v. State Board of Education*, 240 Cal.App.4<sup>th</sup> 838, 846 (2019) citing Ed. Code  
 20 §47612(c). California law provides that for compliance with Section 8 of Article IX of the  
 21 California Constitution prohibiting expenditure of public funds for sectarian or denominational  
 22 schools, doctrine or instruction in public schools, a charter school is under the exclusive control of  
 23 the officers of the public schools (here, their own administrators). Ed. Code §47612(a). Charter  
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26 <sup>2</sup> This is another factual demonstration that SJUSD Defendants have nothing to do with the disputed  
 27 issue. By Plaintiff's own allegations, nowhere were SJUSD board members or its superintendent  
 28 involved in the curriculum choices, grading or expulsion process that Plaintiff alleges, nor any  
 investigation regarding same which involved Visions' personnel exclusively.

1 school officials are “officers of public schools because charter schools are part of the public school  
2 system. *Ghafur v. Bernstein*, 131 Cal.App.4<sup>th</sup> 1230, 1239-1240 (2005).

3 Furthermore, Plaintiffs’ claim that *Wilson* supports their position is also implausible. ECF  
4 29, 7:22-8:18. Plaintiffs’ description of the *Wilson* case to suggest that it requires a chartering  
5 authority to control the day-to-day activities of a charter school are not supported by that case. In  
6 fact, Plaintiffs’ analysis fails to acknowledge its summary statement that charter schools operate  
7 under their own power:

8 “[U]nder this scheme (The Charter School Act), charter school officials are  
9 officers of public schools to the same extent as members of other boards of  
education of public-school districts. So long as they administer charter schools  
according to the law and their charters, as they are presumed to do, they stand on  
the same constitutional footing as non-charter school board members. If they  
10 violate the law, the charter will be revoked.”

11 *Wilson v. State Board of Education, Supra*, 75 Cal.App.4<sup>th</sup> at 1141. But if a charter school petition  
12 failed to affirm compliance with California Constitution Article IX, section 8, or if the charter  
13 petition requires compliance, but the charter ultimately did not comply, “***either situation would be  
immediate grounds for charter revocation.***” *Id.* at 1143, emph. added. In other words, Plaintiffs’  
14 claim that *Wilson* requires SJUSD Defendants to support their position here and revoke Visions’  
15 charter because it followed the law prohibiting expenditure of public funds on faith-based materials  
16 is expressly contrary to *Wilson*’s express analysis.  
17

18 **B. SJUSD Defendants do not Operate Within Visions in Education, are not Responsible  
to Implement any Injunctive Relief if Granted, and Should be Dismissed**

19 Plaintiffs cite the *Hartmann* case for the proposition that the SJUSD Defendants do not need  
20 to be causally connected to the conduct at issue because they are sued in their official capacity for  
21 injunctive claims only.<sup>3</sup> However, a clear reading of that case and others confirm that it does not  
22 apply to SJUSD Defendants because they are not part of the entity whose policies or practices  
23 allegedly violate their rights.  
24

25 In *Hartmann*, the California Department of Corrections was sued for alleged religious  
26 discrimination. *Hartmann v. California Department of Corrections and Rehabilitation*, 707 F.3d  
27

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28 <sup>3</sup> It is notable that Plaintiffs’ prayer for relief goes beyond injunctive relief. (ECF1, 31:13-15.)

1 1114, 1120-1122 (9<sup>th</sup> Cir. 2019). The Plaintiffs were inmates incarcerated in the California State  
 2 prison system who claimed that their free exercise of religion was prohibited because the  
 3 Department of Corrections did not have a Wiccan chaplain whereas other religions were provided  
 4 chaplains. (*Id.*) Plaintiffs, seeking injunctive relief named as a defendant the secretary of the  
 5 California Department of Corrections and Rehabilitation in their official capacity though that  
 6 person had no involvement with the underlying policy. The CDCR Secretary moved to dismiss  
 7 arguing that they were not involved with the policy at issue. The plaintiff's complaint survived  
 8 12(b)(6) Motion to Dismiss. *Id.* at 1127. The 9<sup>th</sup> Circuit noted that, “[a] Plaintiff seeking  
 9 injunctive relief against the state is not required to allege a named official's personal involvement in  
 10 the acts or omissions constituting the alleged constitutional violation. [Citation.] Rather, a plaintiff  
 11 need only identify the law or policy challenged as a constitutional violation and name the official  
 12 ***within the entity who can appropriately respond to an injunctive relief.***” (*Id.*, quoting *L.A. County*  
 13 v. *Humphries*, 131 S.C.T. 447, 452 (2010), emph. added.) The secretary of the California  
 14 Department of Corrections and Rehabilitation, an official **within the entity to respond to the**  
 15 **injunctive relief**, was a proper defendant because they were responsible for the administration of  
 16 the Department of Corrections and Rehabilitation “including its policies, practices, and custom, and  
 17 therefore has the responsibility and authority to ensure that the CDCR religious accommodation  
 18 policies comply with and do not violate federal and state constitutions and statutory requirements.”  
 19 (*Id.*) Likewise, the Secretary of CDCR was also deemed a proper defendant in a prospective  
 20 injunctive relief claim in a free exercise challenge over conjugal visits “because he would be  
 21 responsible for ensuring that injunctive relief was carried out.” *Pouncil v. Tilton*, 704 F.3d 568, 576  
 22 (9<sup>th</sup> Cir. 2012). However, that is not the case here for SJUSD Defendants.

23 In the context of a school district, individual board members may be sued in their official  
 24 capacity under 42 USC section 1983 for injunctive relief when their district's policies are at issue.  
 25 *Riley's American Heritage Farms v. Elsasser*, 32 F.4<sup>th</sup> 707, 732 (9<sup>th</sup> Cir. 2022). Those individuals  
 26 are appropriate defendants because they govern the district and should plaintiffs prevail on their  
 27 injunctive relief claims, the board members will remedy the policy that presents the constitutional  
 28 violation. *Id.*

1 SJUSD Defendants are separate from Visions under the Education Code and the Petition for  
 2 Charter Renewal. As noted in the moving papers, there is completely separate governance between  
 3 SJUSD and Visions. ECF 24-2, Ex. A Charter Renewal Petition for Visions in Education, 88-96.  
 4 Visions has its own Board of Directors, Advisory Board, Executive Director/Superintendent,  
 5 administration, faculty and staff charged with administering its program(s) on a day-to-day basis,  
 6 establish policies to guide staff, adhere to state and federal laws, ensure compliance with all  
 7 applicable regulations with the Executive Director in conjunction with the management team being  
 8 “responsible for the decisions of the Charter School.” *Ibid.*, 90-92.

9 Visions’ personnel are not employed by SJUSD. *Ibid.*, 129. Visions has its own  
 10 independent superintendent, board members and administrative personnel who are all identified as  
 11 defendants served in their official capacities, and the SJUSD Defendants, unlike the individual  
 12 defendant in *Hartmann*, are not officials “within the entity” whose policies, practices or customs are  
 13 being challenged. The Visions’ personnel identified in the Complaint include Visions in Education,  
 14 and its personnel including Defendant Albright (Principal), Defendant Olmos  
 15 (Superintendent/Executive Director), Defendant Morrison (Director of Instruction), Defendant  
 16 Studer (Chief Academic Officer), and Defendant Holman (Chairman of Board of Directors). ECF  
 17 1, ¶28-33. Those Visions defendants, not SJUSD Defendants, are the persons within the Visions’  
 18 organization who are the appropriate defendants for Plaintiffs’ injunctive claims if they are  
 19 successful because it is their policies, practices and conduct challenged and they would implement  
 20 any injunctive relief if granted.

21 SJUSD Defendants have nothing to do with the policy, procedure or dispute here. They  
 22 were not involved in any of the underlying conduct or attempted resolution given Plaintiffs’  
 23 allegations showing exclusive involvement by Visions’ personnel with their dispute. The notion  
 24 that SJUSD Defendants should remain in the case in the event that injunctive relief is awarded is  
 25 not supported by Plaintiffs’ allegations nor the Charter Renewal Petition because they were not  
 26 involved in creating or contributing to the dispute, and will not be involved with implementing any  
 27 required change – Visions personnel will do so if necessary.

28

## IV. CONCLUSION

2 San Juan Unified School District Board Members and Superintendent respectfully request  
3 that the Court grant their motion to dismiss them from this litigation. As Plaintiffs' own allegations  
4 confirm, these defendants had nothing to do with the issues which Plaintiffs bring to the Court. The  
5 allegations between Carrie Dodson and her child regarding curriculum choices, grading and/or  
6 expulsion solely involve Visions in Education personnel, and they have identified those personnel  
7 as defendants. To now claim that the SJUSD Defendants should remain in the case to implement  
8 injunctive relief, if granted, ignores that those other defendants are solely responsible for the  
9 governance of Visions in Education. It is those other parties that would implement any injunctive  
10 relief and not SJUSD Defendants.

Dated: November 30, 2023

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